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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,464	02/17/2004	Srinivasa Madhyastha	14233.15USU1	1780
23552	7590	09/11/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			KAM, CHIH MIN	
			ART UNIT	PAPER NUMBER
			1656	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,464

Applicant(s)

MADHYASTHA, SRINIVASA

Examiner

Chih-Min Kam

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. The final rejection of previous Office Action dated June 21, 2006 is withdrawn due to a ground rejection.

Status of the Claims

2. Claims 42-46 are pending.

Applicant's amendment filed August 21, 2006 is acknowledged, and applicants' response has been fully considered. Claim 42 has been amended, and claims 12-14 and 35-41 have been cancelled. Therefore, claims 42-46 are examined.

3. The status of claims 43-46 are indicated as new claims, which is not right since these claims are previously presented. Appropriate correction is required.

Claim Objections

4. Claim 43 is objected to because of the use of the term "a voice prosthetic". Use of "a voice prosthetic device". The claim is also objected to because it recites "tubing" twice.

Withdrawn-Claim Rejections - 35 U.S.C. § 103

3. The previous rejection of claims 12-14 under 35 U.S.C. § 103(a) as being unpatentable over Charter *et al.* (US 2002/0001582) taken with Johansen (WO 96/06532), is withdrawn in view of applicant's cancellation of the claim, and applicant's response at page 4 in the amendment filed August 21, 2006.

4. The previous rejection of claims 35-41 under 35 U.S.C. § 103(a) as being unpatentable over Willcox *et al.* (CA 2, 284,364) taken with Tomita *et al.* (EP 629347), is withdrawn in view of applicant's cancellation of the claim, and applicant's response at page 4 in the amendment filed August 21, 2006.

New Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willcox *et al.* (CA 2, 284,364, published April 2, 2002) taken with Tomita *et al.* (EP 629347, published at December 21, 1994) and Johansen (WO 96/06532).

Willcox *et al.* disclose an antimicrobial agent such as lactoferrin is used to coat a surface of a biomedical device, where the biomedical device is meant any device designed to be used in or on either or both human tissue or fluid, e.g., stents, implants, catheters and ophthalmic lenses (page 2; claims 37-41), and wherein the surface on the biomedical device is a polymer of ethylene or propylene, polyurethanes, polyesters and mixtures thereof, or silicones containing hydrogels (page 4, lines 15-29). However, Willcox *et al.* do not teach the use of ovotransferrin, protamine sulfate and EDTA, or ovotransferrin and protamine sulfate in the coatings.

Tomita *et al.* disclose an antimicrobial agent comprising lactoferrin hydrolysates, one or more antimicrobial peptides from lactoferrin; and one of more compounds selected from the group consisting of metal-chelating protein (e.g., lactoferrin, transferrin, conalbumin; page 5, lines 36-38), tocopherol, EDTA or a salt thereof, or others (page 4, lines 11-19). The reference also teaches the antimicrobial agent can be used for treatment of any products or materials thereof, e.g., dentifrices, diapers or others (page 6, lines 23-42).

Art Unit: 1656

Johansen discloses a bacteriocidal or fungicidal composition comprising a basic protein in combination with a cell-wall degrading enzyme or an oxidoreductase, where either protamine or protamine sulfate can be used as the basic protein (page 3, line 11-page 4, line 15).

At the time of invention was made, it would have been obvious that one of ordinary skill in the art is motivated to combine the three references to use the antimicrobial agent containing lactoferrin, lactoferrin peptides, conalbumin and EDTA as taught by Tomita *et al.* and the antimicrobial composition comprising protamine sulfate as taught by Johansen in preparing an antimicrobial agent to coat a surface of a biomedical device such as stents, implants, catheters and ophthalmic lenses as taught by Willcox *et al.* (claims 42-43) because the antimicrobial agent taught by Tomita *et al.* contains additional antimicrobial compounds such as EDTA and lactoferrin peptides, conalbumin in addition to lactoferrin; the antimicrobial composition taught by Johansen contains protamine sulfate; and it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose (See MPEP 2144.06 and *Ex parte Quadranti*, 25 USPQ2d 1071 (Bd. Pat. App. & Inter.1992)). Since and the medical devices recited in the claims are well-known medical devices (claims 44-46), thus, the combined references result in the claimed invention and was, as a whole, *prima facie* obvious at the time the claimed invention was made.

Art Unit: 1656

Conclusion

6. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (571) 272-0948. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr can be reached at 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chih-Min Kam, Ph. D.
Primary Patent Examiner



**CHIH-MIN KAM
PATENT EXAMINER**

CMK

September 6, 2006